

1 STATE OF CALIFORNIA

2 DEPARTMENT OF INDUSTRIAL RELATIONS

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5 DECISION ON ADMINISTRATIVE APPEAL

6 IN RE: LOZANO CASEWORKS, INC.,  
7 INSTALLATION OF PREFABRICATED CABINETS,  
8 CHAFFEY JOINT UNION HIGH SCHOOL DISTRICT, PALMDALE SCHOOL  
9 DISTRICT, SANTA BARBARA ELEMENTARY/HIGH SCHOOL DISTRICT  
10 PUBLIC WORKS CASE NO. 99-069

11 I. Introduction and Procedural History

12 On December 22, 1999, the Director of the Department of  
13 Industrial Relations ("Director") issued a public works coverage  
14 determination finding that workers performing the installation of  
15 custom cabinetry for Lozano Caseworks, Inc. ("Lozano") at various  
16 school districts in Southern California were entitled to the  
17 payment of prevailing wages pursuant to Labor Code sections  
18 1720(a) and 1772.<sup>1</sup> On January 20, 2000, Lozano filed an appeal  
19 of the Director's determination. On April 14, 2000, a copy of  
20 the appeal and attachments were faxed and mailed to the Southern  
21 California-Nevada Council of Carpenters ("Carpenters"), which  
22 filed the initial request for a public works coverage request on  
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26 <sup>1</sup> All further statutory references are to the Labor Code unless  
27 otherwise indicated. Labor Code section 1720(a) generally defines "public  
28 works" to mean: "Construction, alteration, demolition, or repair work done  
under contract and paid for in whole or in part out of public funds . . ."  
Section 1772 provides that, "[W]orkers employed by contractors or  
subcontractors in the execution of any contract for public work are deemed to  
be employed upon public work."

1 October 20, 1999. No response from the Carpenters to the appeal  
2 has been received to date.

## 4 II. Issues and Conclusions on Appeal

5 Lozano contends that the work done in installing the  
6 cabinets is the installation of a finished product which involves  
7 only minimum labor and which does not fall within the California  
8 Labor Code requirements for prevailing wages. Lozano bases its  
9 position upon previous letters written to it by then-Chief of the  
10 Division of Labor Statistics and Research ("DLSR"), Dorothy  
11 Vuksich. These letters are appended to the appeal as Exhibits A,  
12 B, C, and D. For the reasons discussed below, the Director  
13 affirms his decision that the installation of custom cabinetry at  
14 the various public schools requires the payment of prevailing  
15 wages because it is both construction and alteration as those  
16 terms are used in section 1720(a) and because each installation  
17 is also part of a larger public works project and, therefore,  
18 covered under section 1772.  
19

## 21 III. Relevant Facts

22 Lozano is engaged in the manufacture and installation of  
23 prefabricated custom cabinetry and caseworks, which it sells to  
24 various public entities, including school districts throughout  
25 the State of California. The caseworks and plastic laminated  
26 cabinets are built to specified dimensions from detailed plans  
27 and specifications and are also field measured for accuracy.  
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1 "Shop drawings" are used to build the caseworks and cabinets.  
2 The caseworks and plastic laminated cabinets are custom built and  
3 installed according to job plans and specifications. The process  
4 includes the use of specified hardware called for in the design  
5 specifications. Hand and power tools are used in manufacturing  
6 the caseworks and cabinets. The caseworks and cabinets are  
7 shipped to the job sites for installation. Hand and power tools  
8 are used again in the installation of the caseworks and cabinets.  
9 The cabinets are secured in place using three-inch screws through  
10 the cabinet backs and into walls and ceilings as necessary to  
11 properly secure the cabinets. At the site where the installation  
12 is to occur, each piece to be installed is custom cut and trimmed  
13 to exact specifications. The caseworks and cabinets are fitted  
14 and "scribed," or "cut to fit," as necessary. Additionally,  
15 cabinets are leveled and may be screwed together. Final  
16 adjustments are made and caulking or filling is done. The  
17 cabinets are inspected at the job site after they are installed,  
18 either by the general contractor or the public entity buying the  
19 cabinetry or caseworks.  
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#### 22 IV. Discussion

23 A. Lozano's Installation of Custom Cabinetry is a  
24 Public Works Because it is Both Construction and  
25 Alteration As Those Terms are Used in Section  
26 1720(a) and Performed in the Execution of a Public  
Works Contract Under Section 1772.

27 Lozano contends that the installation of custom cabinetry is  
28 not a covered public works because the "installation of

1 prefabricated units involve minimum labor, using only hand tools  
2 and power screw-guns." Lozano offers no legal authority for its  
3 conclusion that the installation of cabinets is not covered work,  
4 nor does it offer any authority as to why the installation of  
5 cabinetry as part of the larger public works project on a school  
6 site is not, as the initial determination found, also covered  
7 under section 1772. As noted in the initial determination on  
8 December 22, 1999, the installation in these cases includes on-  
9 site assembly, which consists of fastening cabinets to existing  
10 walls and floors and other work to complete the installation. In  
11 each of the cases that were the subject of the initial coverage  
12 determination, it is also apparent that the work is done as part  
13 of a larger public works project for the various school districts  
14 involved.  
15

16 Based on the facts in this case, the original determination  
17 is upheld. The work involved in the installation of the cabinets  
18 is construction or alteration as those terms are used in section  
19 1720(a). The necessary work includes the use of hand and power  
20 tools to construct and install the cabinets and casework. The  
21 work requires the alteration of interior surfaces to meet the  
22 specifications required for each of the projects at issue in this  
23 appeal. Further, the installation work is done in the execution  
24 of a larger public works and is, therefore, a public works under  
25 section 1772. For these reasons, the workers performing the  
26 cabinet installation are entitled to the payment of prevailing  
27 wages.  
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2 B. The Prior Letters of the Chief of DLSR are  
3 not Binding in a Public Works Coverage  
4 Determination Made by the Director of  
5 Industrial Relations.

6 Lozano bases its position of non-coverage in part on  
7 previous letters that were written to it by the former Chief of  
8 DLSR, Dorothy Vuksich. This position is rejected for the  
9 following reasons.

10 First, the letters of former Chief Vuksich do not constitute  
11 decisions of the Director pursuant to Title 8, Cal.Code Regs.  
12 sections 16300 and 16301. As made clear in section 16300(b), all  
13 final determinations are the province of the Director.

14 Second, the letters signed by Chief Vuksich are not relevant  
15 to a determination as to whether cabinet installation is a public  
16 works because the letters are not precedential decisions. Under  
17 Government Code section 11425.60 (added by Statute 1995, Chapter  
18 938, section 21, operative July 1, 1997), "a decision may not be  
19 expressly relied on as a precedent unless it is designated as a  
20 precedent decision by the agency." The Department of Industrial  
21 Relations has designated a series of precedential decisions by  
22 publication of a notice in the California Regulatory Notice  
23 Register in January 1999. An index of the precedential decisions  
24 has been available from DLSR since that time, and the  
25 availability of that index has been made widely known by the  
26 Department. Neither Chief Vuksich's letters nor the position  
27 taken in those letters are contained in the Director's  
28 precedential public works determinations.

1 Finally, all four of the letters signed by Chief Vuksich  
2 conclude that if substantial on-site work, including substantial  
3 on-site alteration of cabinets and caseworks or alteration of  
4 existing surfaces, is necessary to accommodate the cabinets, the  
5 work may be a covered public works. The letters also indicate  
6 that if there is substantial on-site work, a formal coverage  
7 determination should be requested. Here, there is substantial  
8 on-site work necessary to complete the installation of the  
9 caseworks and cabinetry. Further, despite the warning contained  
10 in each letter, Lozano made no attempt to obtain formal coverage  
11 determinations for any of the specific projects at issue in this  
12 appeal.  
13

14 C. No Hearing is Required.

15 Lozano requests that the Director hold a hearing to allow it  
16 to present evidence in support of its position that the  
17 installation work is not a covered public works project. Title  
18 8, Cal.Code Regs. section 16002.5(b) states that, "The decision  
19 to hold a hearing is within the Director's sole discretion."  
20 Because the Director finds that this project is a public works as  
21 a matter of law, and because the materials submitted supply the  
22 necessary facts upon which to base a decision and no factual  
23 question is at issue, no hearing is required and the appeal is  
24 decided on the evidence submitted.  
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V. Conclusion

For the foregoing reasons, the initial determination in this matter is affirmed and the appeal is denied.

DATED:

6/26/00

Stephen J. Smith  
Stephen J. Smith  
Director

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